



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: November 1, 2012

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Steve Ingham, Division of Food Safety Administrator *Steve Ingham*

SUBJECT: Retail Food Establishments; Final Draft Rule Amending ch. ATCP 75, Wis. Admin. Code

PRESENTED BY: Steve Ingham and Staff

REQUESTED ACTION:

At the November 14, 2012 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a final draft rule (copy attached) related to ch. ATCP 75, Retail Food Establishments.

SUMMARY:

This rule updates the Wisconsin Food Code (in the Appendix to Ch. ATCP 75) to be consistent with the 2009 edition of the Model Food Code issued by the United States Food and Drug Administration (FDA). The rule changes the numbering and adds the new prioritization system found in the 2009 edition, and also makes other updates and minor changes to the current rules.

Background

The FDA Model Food Code provides practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. While the FDA Model Food Code is not federal law, it serves as a model for state and local regulation of retail food establishments. Forty-nine states base their retail food regulations on a version of the FDA Model Food Code. Since it was first issued in 1993, the FDA Model Food Code has been revised every two or four years. The most recent revisions were issued in 2001, 2005, and 2009. The Wisconsin Food Code presently being used is based on the 2005 FDA Model Food Code

DATCP licenses and inspects 3,472 retail food establishments, under s. 97.30, Stats. These retail food establishments include grocery stores, bakeries, and convenience stores. In addition, under s. 97.41, Stats., cities and counties may choose to contract with DATCP as local agents and inspect retail food establishments in their jurisdiction. Presently, 42 local agents contract with DATCP to inspect 6,647 retail food establishments.

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DHS currently is proposing an identical version of DATCP's food code in an appendix to their administrative rule relating to restaurants so that the same rules will also apply to the restaurants. DHS also operates a local agent program that allows cities and counties to contract to inspect restaurants in their jurisdictions. This rulemaking is a joint effort by DATCP and DHS to maintain consistent and up-to-date standards for all retail food operations. Some grocery stores include restaurants, and vice-versa. DATCP and DHS coordinate their licensing and inspection activities so that there is no regulatory overlap.

In addition to the extensive collaboration between DATCP and DHS, input was sought from key stakeholders, including local health departments and the retail food industry. This rule was developed in consultation with an advisory committee that included local health agencies (large and small), the Wisconsin Grocers Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the Wisconsin Department of Public Instruction, and the University of Wisconsin-Madison Department of Food Science.

DATCP adopts the format and most of the content of the FDA Model Food Code as an Appendix to ch. ATCP 75, Wis. Adm. Code (the Wisconsin Food Code). DHS adopts the identical Wisconsin Food Code as an Appendix to ch. DHS 196, Wis. Adm. Code. While both DATCP and DHS are adopting changes to the Wisconsin Food Code, DHS is also adopting additional changes to ch. DHS 196 ("Restaurants") that relate specifically to DHS's restaurant licensing program.

Rule Content

This rule updates DATCP's Wisconsin Food Code, which was last updated in 2006. Although the substance of most of the provisions of the Wisconsin Food Code has not changed, this proposed rule has been amended to be consistent with the internal formatting and prioritization system changes in the 2009 FDA Model Food Code. These changes include (1) the removal of the entire numbering system for definitions, (2) the use of new terms reflecting the internal prioritization system within the food code, and (3) the use of different superscript letters (reflecting the changed terms) throughout the Wisconsin Food Code.

In addition to changes in prioritization and formatting, the rule does the following:

Definitions

- The term "potentially hazardous food" has been replaced with "potentially hazardous food (time/temperature control for safety food)" to be consistent with the FDA Model Food Code and to clarify that "potentially hazardous food" is food that requires time and/or temperature control to promote food safety.
- "Potentially hazardous foods (time-temperature control for safety foods)" now include "cut leafy greens" and "cut tomatoes".

Food Establishment Management and Personnel

- “Food allergy awareness” has been added as part of the food safety training required to be provided to employees by the “person in charge”.
- Food establishment managers are required to inform food employees of their responsibility to report certain symptoms of illness, as they relate to diseases transmittable through food. As a result of certain symptoms or diseases, activities of food employees temporarily may be limited.
- Food employees’ bare-hand contact with ready-to-eat foods is restricted to certain limited conditions, using the detailed guidelines in the model food code. Special training requirements by management must be implemented.

Food Safety and Labeling

- Frozen, commercially processed, and packaged raw animal foods (e.g., meat) are exempted from the requirement that they be separated from ready-to eat foods (raw or cooked) during frozen storage.
- Serving hamburgers and other ground meats in an undercooked form upon a consumer’s request is no longer an option for items ordered from a children’s menu.
- Certain requirements related to methods for processing of foods stored in reduced-oxygen packaging, such as “cook-chill” and “sous vide,” are described.
- Criteria are provided for using a non-continuous process for cooking of raw animal foods (meat in particular).

Fiscal Estimate and Economic Impact Analysis

This rule’s fiscal estimate has not changed from the original submitted. Revisions to the Wisconsin Food Code (Appendix to ch. ATCP 75, Wis. Adm. Code) will have no ongoing fiscal effect on state or local government. Proposed revisions will not significantly alter state or local retail food enforcement activities. Costs to local government agencies will be limited to staff time to attend training.

The economic impact analysis, which includes discussion on approaches to food regulation used in neighboring states, has been updated to include the fact that Michigan recently amended its state food code to reflect the 2009 edition of the FDA Model Food Code. A complete Fiscal Estimate and Economic Impact Analysis is attached.

Business Impact Analysis and Effect on Small Business

This rule is not expected to have a significant impact on business, including small business, because the food sanitation requirements contained in this rule are similar to those that currently

apply. This rule will require some additional training of retail food establishment personnel. However, it should not be necessary for retail food establishments to hire additional professional services to comply with this rule. A Business Impact Analysis is attached.

The FDA develops and publishes the FDA Model Food Code based on the best available science and information related to food safety. The FDA Model Food Code encourages consistent state and local regulation of food establishments.

Because the FDA Model Food Code establishes minimum requirements for safe food handling, DATCP is unable to lessen or exempt food establishments from those requirements. However, the department may grant a variance in cases where it is impractical for a food establishment to achieve strict adherence to the Wisconsin Food Code if the variance does not jeopardize the public's health, safety or welfare. DATCP will provide training, fact sheets, and handouts to Wisconsin retail food establishments, including small businesses, to help explain and implement the modified requirements contained in this rule.

Public Hearings

DATCP and DHS jointly held three public hearings on this rule and written comments were accepted until October 25, 2012. The dates and locations of the hearings were:

October 9, 2012	Madison
October 11, 2012	Waupaca
October 12, 2012	Green Bay

A total of six persons either appeared at a hearing or submitted written comments. Of those six, four who appeared at a hearing registered in support of the proposed rule. The fifth testified that he supported the rule but did find some of the new naming conventions confusing. The sixth (written comments only) indicated support for revisions in chapter two of the rule and then had several questions. The department received two written comments generally in support of the rule.

Two individuals who work as regulators indicated the proposed language in the Wisconsin Food Code is less user-friendly. However, because the new terminology comes from the latest FDA Model Food Code, the terminology is being kept to ensure uniformity nationally. The Wisconsin Restaurant Association expressed their support of the rule and suggested efforts to adopt future revisions of the FDA Model Food Code be started within six months of publication and be completed within one year thereafter. DATCP agrees that this is a good idea and encourages cooperation and productive use of resources in future rule drafting efforts. A complete summary of Hearing Appearances, Testimony, Comments and Responses is attached.

Changes from the Hearing Draft

The Legislative Council Rules Clearinghouse made a number of comments on the proposed rule. In particular, the Clearinghouse pointed out various inconsistencies between DATCP's and DHS's rules, and other inconsistencies between the proposed and existing Wisconsin Food Code. The two

departments responded by comparing every page of their rule draft versions side by side. DATCP and DHS reconciled the two versions of the rule, which resulted in one rule draft document of the Wisconsin Food Code. DATCP and DHS also compared every page of that rule draft document to the current Wisconsin Food Code. Both departments are now using a single, reconciled draft of the food code going forward in the rulemaking process.

DATCP did not make certain suggested changes, as described more fully below:

- Comment 2.a.(3). The suggestion that numbers generally should be expressed using Arabic numerals was not followed because this rule is modeled on the 2009 FDA Model Food Code, which expresses numbers that occur in sentences using words. DATCP seeks to keep language and certain format conventions consistent with the FDA Model Food Code.
- Comment 2.b. The suggestion that DATCP's rule analysis should include the same detailed listing of changes to the Wisconsin Food Code as provided by DHS was not added, but DATCP will offer a copy of DHS's listing as a general resource if that information is requested.
- Comment 2.c. The question was asked whether there should be a corresponding provision to s. DHS 196.12, Wis. Adm. Code, which generally states that an amended version of the federal model food code has been adopted in the application and enforcement of food safety requirements. DATCP did not make any additions to its ch. ATPC 75, Wis. Adm. Code, because it already has two provisions, ss. ATPC 75.02(3) and 75.05, Wis. Adm. Code, which provide that retail food establishments must meet food safety standards in the food code appended to ch. ATPC 75. DATCP did review definitions that were removed from the food code, as suggested.
- Comment 2.i. The question was asked why the department is proposing to remove the numbering system in the definitions section of the Wisconsin Food Code. The reason DATCP removed the numbering system in the proposed rule is that the numbering system was removed in the 2009 FDA Model Food Code, and DATCP is simply updating its food code to reflect that change. After consultation with Clearinghouse staff, it was understood that the Clearinghouse no longer questioned the reasoning behind the proposed removal of the numbering system in the definitions.
- Comment 2.j. The suggestion was made to move the definition of "CIP" before the definition of "CFR" to maintain alphabetical order of the terms themselves. DATCP did not make this change because it was inconsistent with the 2009 Federal Model Food Code, which appears to use the letters of acronyms, rather than the terms themselves, to determine alphabetical order in the definitions section.
- Comment 2.m. The question was asked whether certain portions of the proposed Wisconsin Food Code should contain unusual partial capitalization. DATCP is following the formatting convention of the 2009 FDA Model Food Code, which uses

“small caps” for any defined words or portions of defined words, including other forms of a defined word.

- Comment 2.o. A suggestion was made to capitalize or underscore specific heading terms in the margin. DATCP agrees that there is some inconsistency in the way the font styles and underscoring in the margin are used in the 2009 FDA Model Food Code, but left the terms as they are because DATCP seeks to stay consistent with the FDA Model Food Code to reduce confusion when updating the rule in the future.
- Comment 2.q. The suggestion was made that when referencing the title of a certain CFR section and the CFR section itself, there should be some method of separation, such as use of a comma or parentheses (e.g., “21 CFR 131 Milk and cream” could be “21 CFR 131, Milk and cream” or “21 CRF 131 (Milk and cream).” DATCP agrees that this convention of the FDA Model Food Code is unusual but did not make a change to remain consistent with the national standard.
- Comment 4.b. The question was asked why some terms in the rule cite to a CFR definition when there is a corresponding statutory definition in ch. 97, Stats. The Clearinghouse suggested that defined terms in the rule should be reviewed for corresponding statutory definitions. DATCP did review the rule and determined that the CFR definitions were best suited for the terms used in the food code.
- Comment 5.b. The question was whether the department intended to change the term “person” to “individual” throughout the rule. In some instances, the term “person” is correctly used in the 2009 FDA Model Food Code, but in some instances the department takes issue with its use. “Person” is defined in the proposed rule to mean “an individual, partnership, association, firm, company, corporation, organization, municipality, county, town, or state agency.” DATCP only changed the term “person” to “individual” in parts of the rule in which it would not make sense to enforce against any legal entity other than a human individual, e.g., “*SERVICE ANIMALS that are controlled by the disabled EMPLOYEE or ~~PERSON~~ individual.*”
- Comment 5.f. The suggestion made was to capitalize the term “salmonellae.” DATCP did not make this change in order to stay consistent with the 2009 FDA Model Food Code and to reduce confusion when updating the rule in the future.
- Comment 5.i. The suggestion made was to change the heading title from “Handling Prohibition” to “Service Animal Handling.” DATCP did not make this change in order to stay consistent with the 2009 FDA Model Food Code and to reduce confusion when updating the rule in the future.

Next Steps

If the Board authorizes this final draft rule, DATCP will transmit the final draft rule for legislative committee review. If the Legislature takes no action to stop the rule, the DATCP Secretary will

sign the final rulemaking order and transmit it for publication. The rule will take effect the first day of the third month following publication in the Wisconsin Administrative Register.

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Retail Food Establishments
Adm. Code Reference: Appendix to ATCP 75
Rules Clearinghouse #: 12-033
DATCP Docket #: 09-R-01

Rule Summary

The Department of Agriculture, Trade and Consumer Protection (“DATCP” or “department”) licenses retail food establishments under s. 97.30, Stats. Generally, “retail food establishments” are food processing facilities that sell food requiring temperature control (refrigeration or cooking) where food is sold to consumers at retail. Businesses that usually require licensure as retail food establishments include grocery stores, bakeries, coffee shops, doughnut shops, and convenience food stores.

The department has adopted food safety rules for these establishments in ch. ATCP 75. DATCP licenses and inspects approximately 3,400 of these retail food establishments, and contracts with cities and counties that act as DATCP’s agents to license and inspect approximately an additional 6,600 retail food establishments. The department is working with the Department of Health Services (DHS) to propose an identical Wisconsin Food Code to apply to restaurants.

This rule generally does the following:

- Incorporates updates from the 2009 FDA Model Food Code issued by the United States Food and Drug Administration (FDA) into the Wisconsin Food Code to reflect current food science standards and to clarify existing rules.
- Makes technical and other minor changes to correct or update the current rules relating to retail food establishments and the Wisconsin Food Code.
- Coordinates DATCP’s licensing requirements for food establishments with the licensing requirements for restaurants, which are regulated by DHS. The agencies have collaborated so that a grocery store that contains a restaurant can be licensed by one agency under identical food code standards.

More specifically, the rule makes a number of updates and minor changes to current rules. These changes include:

¹ This analysis includes, but is not limited to, a small business a small business analysis (“regulatory flexibility analysis”) under ss. 227.114 and 227.19(3)(e), Stats.

- Each provision is now designated as a “Priority Item”, a “Priority Foundation Item”, or a “Core Item”, to assist the industry and regulatory community in prioritizing their food safety inspections and interventions, as necessary. (These terms replace the former system using the terms “Critical” and “Non-Critical” in pre-2009 editions of the FDA Model Food Code.)
- Cut leafy greens and cut tomatoes are included among foods that require time and temperature control (and will require refrigeration).
- Food allergy awareness has been added as part of the food safety training required to be provided to employees by the person in charge.
- Food establishment managers are required to inform food employees of their responsibility to report certain symptoms of illness as they relate to diseases that are transmissible through food. Certain symptoms or diseases may temporarily limit activities that a food employee can do.
- Food employees’ bare hand contact with ready-to-eat food is now only allowed under certain limited conditions.
- Serving ground meats in an undercooked form is no longer an option for items ordered from a children’s menu.
- Certain requirements related to methods of reduced oxygen packaging are clarified in the rule.
- Criteria for non-continuous cooking have been added.

Effect on Businesses, Including Small Businesses

This rule is expected to help all retail food establishments by providing the most current methods identified by FDA to protect public health. A foodborne illness outbreak has the potential to decrease sales and threaten the economic viability of an industry.

The rule clarifies but does not substantially alter current rules related to the regulation of retail food establishments. Consequently, this rule is not expected to have a major impact on large or small businesses. It is likely that many establishments have already implemented the requirements contained in the rule and will incur no additional costs. For those that have not yet implemented the rules, DATCP will provide training, fact sheets, and handouts to Wisconsin retail food establishments and our regulatory partners to assist in implementation of the new rules. Retail food establishments can implement this rule with existing personnel.

In addition to the extensive collaboration between DATCP and DHS, input and support have been obtained from key stakeholders. This rule was developed in consultation with an advisory group that included local health agencies, the Wisconsin Grocer’s Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the

Wisconsin Department of Public Instruction, and the University of Wisconsin-Madison Department of Food Science. These stakeholders have indicated support for this rule.

Accommodation for Small Business

The FDA develops and publishes the FDA Model Food Code based on the best available science and information related to food safety. The FDA Model Food Code encourages consistent state and local regulation of food establishments. Numerous states have adopted food regulations based on the FDA Model Food Code.

Because the FDA Model Food Code establishes minimum requirements for safe food handling, DATCP is unable to lessen those requirements in the Wisconsin Food Code. However, the department may grant a variance in cases where it is impractical for a food establishment to achieve strict adherence to the Wisconsin Food Code if the variance does not jeopardize the public's health, safety or welfare.

The department will provide training, fact sheets, and handouts to our regulatory partners to help implement the modified requirements contained in this rule. DATCP will review and update current training materials and create new materials where needed.

Conclusion

This rule will not have a major impact on retail food establishment businesses because the rule clarifies but does not substantially alter the existing licensing and inspection requirements of retail food establishments. The department will provide assistance to business, including small business, to implement the updated requirements.

Dated this 31st day of October, 2012

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Steve Ingham
Steve Ingham, Administrator
Division of Food Safety

**ADMINISTRATIVE RULES
FISCAL ESTIMATE AND
ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

☐ Original ☒ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Appendix to ATP 75, Retail Food Establishments

Subject

Revision to ATP 75 appended Wisconsin Food Code

Fund Sources Affected

☒ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

20.115(1)(1a) and 20.115(1)(gb)

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect
☐ Indeterminate

☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☐ Increase Costs
☒ Could Absorb Within Agency's Budget
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy

☒ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

This rule will update the Wisconsin Food Code for retail food establishments, which is included as an appendix to ATP 75, Retail Food Establishments. The United States Food and Drug Administration (FDA) publishes the Model Food Code to provide practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. FDA updates the Model Food Code every four years. The Wisconsin Food Code for retail food establishments was last updated in 2006 and is based on the 2005 FDA Model Food Code.

This rule generally does the following:

- Incorporates provisions of the 2009 FDA Model Food Code into the Wisconsin Food Code for retail food establishments to reflect current food science standards. The revised rule clarifies previously undefined terms and will reduce error in interpreting the rules.
- Makes technical and other minor changes to correct or update the current rules relating to retail food establishments and the Wisconsin Food Code.
- Coordinates DATCP's licensing requirements for food establishments with the licensing requirements for restaurants, which are regulated by the Department of Health Services (DHS) under DHS's Admin. Code DHS 196, Restaurants. The agencies have collaborated to consistently modify their food codes.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Businesses and Business Sectors

This rule applies to retail food establishments regulated by DATCP under Admin. Code ATP 75, Retail Food

Establishments. Specific businesses affected include groceries, bakeries, and convenience stores. DATCP licenses 3,472 of these retail food establishments. In addition, s. 97.41, Stats., allows cities and counties to choose to contract with DATCP as local agents to inspect retail food establishments in their jurisdiction. Currently, 42 local agents contract with DATCP to inspect 6,647 retail food establishments. The rule will also apply to these establishments. The Department of Health Services (DHS) is proposing identical rules for the restaurants they inspect, as well as restaurants inspected under their local agent program.

DATCP worked with DHS and sought advice about the content and potential impact of the rule from an advisory group that included local health agencies, the Wisconsin Grocers Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the Wisconsin Department of Public Instruction, and the UW-Madison Department of Food Science.

Although DATCP worked with an advisory group to determine the impact of the rule, it is unable to specifically quantify the compliance costs to businesses of this rule due to unavailability of specific data. But DATCP does not expect the proposed rule to have a significant economic or fiscal impact on large or small retail food establishments licensed by DATCP. It is likely that many establishments have already implemented the requirements contained in the rule and will incur no additional compliance costs. The department also expects that retail food establishments will be able to implement this rule with their existing personnel. DATCP will assist with providing training materials to businesses. Finally, the rule will not increase licensing fees for retail food establishments.

Local Governmental Units

Revisions to the Wisconsin Food Code will have no ongoing fiscal effect on state or local government. Proposed revisions will not significantly alter state or local retail food enforcement activities. Cost to local government agencies would be limited to staff time to attend training offered by the department. This training will be incorporated into annual training the department already provides to local food enforcement officials.

Public Utility Rate Payers

The rule will have no impact on public utility rate payers as a group.

State's Economy

This rule will not adversely affect the economy, productivity, jobs or the economic competitiveness of the state. Adopting this rule, as other states across the country also adopt rules based on the 2009 FDA Model Food Code, may help Wisconsin retail food companies operate more efficiently if they have locations in multiple states.

General Implementation Costs

The department will provide training, fact sheets, and handouts to Wisconsin retail food establishments and our regulatory partners to help implement the modified requirements contained in this rule. The cost for these outreach activities is estimated to be \$2,500 or less and will be covered by the department's existing budget. Staff time for developing and drafting the rule revisions, conducting public hearings and finalizing the rule, followed by delivery of limited training on the revisions, should be no more than 1,000 hours.

Economic Impact Analysis Comments

DATCP posted the proposed rule online as required under Wis. Stat. § 227.137 and solicited comments from businesses, local government units, and the public about the potential economic impact of the rule. The department did not receive any comments about the potential economic impact of the rule.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits of Implementing the Rule

This rule will benefit retail food establishments and the general public.

Retail Food Establishments

This rule will help small businesses maintain public confidence in the retail food supply by adopting the most current, generally accepted practices for reducing risk associated with foodborne illness. A foodborne illness outbreak has the potential to decrease sales and threaten the economic viability of an industry. The rule will also clarify certain requirements. For example, requirements related to methods of reduced oxygen packaging are described in the rule and criteria for non-continuous cooking have been added, making it easier for businesses to safely prepare food using these methods. Also, the revised rule has been drafted in conjunction with DHS to be identical with its Wisconsin Food Code in ch. DHS 196, Wis. Adm. Code, and to prevent inconsistent regulation of retail food establishments and restaurants.

General Public

Retail establishments that implement the 2009 FDA Model Food Code will be using the most current methods identified by FDA as effective for protecting public health and ensuring food provided to consumers at retail food establishments is safe.

Alternative to Implementing the Rule

If the rule is not adopted, retail food establishments will continue to be regulated under the version of the Wisconsin Food Code which is based on the 2005 edition of the FDA Model Food Code and Wisconsin's regulations will not be consistent with current best practice. As other states adopt the 2009 version of the FDA Model Food Code, Wisconsin's code could become outdated and inconsistent with national standards. In order to be a full partner in an integrated national food safety system, Wisconsin must comply with the FDA Retail Food Regulatory Program Standards, which require Wisconsin to have an up-to-date regulatory foundation for its program activities. Failure to adopt this rule may jeopardize Wisconsin's ability to integrate into the national food safety system and obtain technical and funding assistance from FDA.

Long Range Implications of Implementing the Rule

There are no long range fiscal implications of implementing the rule. In the long run, the rule changes will benefit businesses and the general public by better protecting public health through use of current practices for preventing foodborne illness.

Compare With Approaches Being Used by Federal Government

Federal law, like state law, generally prohibits the sale of adulterated or misbranded food. There are no federal regulations that specifically address retail food operations. However, FDA publishes the Model Food Code based on the best available science and information related to retail food safety. FDA and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the FDA Model Food Code. The current Wisconsin Food Code is based on the 2005 edition of the FDA Model Food Code. This rule updates the Wisconsin Food Code to incorporate changes contained in the 2009 edition of the FDA Model Food Code.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota-Minnesota's current regulations are based on the 1997 edition of the FDA Model Food Code.
Iowa- Iowa's current regulations are based on the 2005 edition of the federal model food code. Iowa reported plans to update their food code to the 2009 version soon.
Illinois-Illinois' current regulations are based on the 2005 edition of the FDA Model Food Code.
Michigan- Michigan adopted the 2009 FDA Model Food Code as of October 2012.

Name and Phone Number of Contact Person

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Hearing Appearances, Testimony, Comments and Responses

Rule Subject: Retail Food Establishments (Food Code)
Adm. Code Reference: ATCP 75
Rules Clearinghouse #: CR 12-033
DATCP Docket #: 09-R-01

Madison, WI
October 9, 2012

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments <i>DATCP's Responses are in Parentheses</i>
Beth Cleary Public Health Madison/Dane County	No	No	No	Registered in support of the rule. Did not register to speak.
Stephanie Moccero Public Health Madison/Dane County	No	No	No	Registered in support of the rule. Did not register to speak.
Susan Quam, Executive Vice President, Wisconsin Restaurant Association (WRA)	Yes	Yes	Yes	Registered in support of the rule. Supports the rule. Also provided written comment, below. The WRA indicated they would like to remove the recertification requirement and require food managers to be tested by exam every five years. (A statutory change would be needed before this provision could be changed.) The WRA also wanted DATCP and DHS to start the rule revision process within six months of the next FDA Model Food Code's release in 2013.

Waupaca, WI
October 11, 2012

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments <i>DATCP's Responses are in Parentheses</i>
Jed Wohlt Waupaca County Health Department 811 Harding St. Waupaca, WI 54981	No	No	No	Registered in support of the rule. Did not register to speak.

Person/Organization	Testified- Yes/No	Written- Yes/No	Registered at Hearing Yes/No	Position/Comments <i>DATCP's Responses are in Parentheses</i>
Brian Hobbs Polk County Health Department 100 Polk County Plaza Suite 180 Balsam Lake, WI 54810	Yes	No	Yes	Testified at hearing that he supports the rule. Indicated that the new revisions and updates provide clarity. However, noted that the new naming conventions of "priority", "priority foundation", etc., are confusing.

Written Comments

Person/Organization	Position/Comments <i>DATCP's Responses are in Parentheses</i>
David Roettger Sheboygan County Health Department roettdar@dar.sheboygan	E-mail indicated that the proposed language seems to make the code more technical and less user-friendly and that the new naming conventions of "priority", "priority foundation", etc., are confusing. However, he also indicated that the descriptions for handling illnesses are helpful and liked the proposed language regarding person in charge. Had questions about various aspects of the proposed rule, including: 1) Why the definition of meal was eliminated. (The definition of meal is now included in DHS 196.03(3m)); 2) "Balut" was added to the food code. (This "egg" type is becoming more popular in Wisconsin and throughout the nation; The definition is included in the model food code); and 3) The food code requires rinsing after sanitation. (This provision is consistent with the model food code and accommodates businesses that want to sanitize using chlorine.) He also wondered why requirements for food prep sinks were changed, descriptions of "push carts" and "mobile units" and the description of "cold holding temperatures and times" were eliminated, and wood is no longer listed as a food contact surface. (These topics are still included in the food code.)
Susan Quam, Executive Vice President, Wisconsin Restaurant Association	Also testified at a hearing, above. Noted that maintaining a uniform food code ensures consistency between all regulatory jurisdictions, including states, which is important for the restaurant industry. Strongly believes that Wisconsin needs to raise the standards for Certified Food Protection Manager "CFPM" and adopt the language written in the 2009 Food Code for the definition of a Certified Food Protection Manager. Noted that improvements to food protection are fast paced. The FDA issues a model food code every four years and a supplemental code in between new codes. They were disappointed that Wisconsin is behind other states in adopting the 2009 model food code. Suggested that DATCP and DHS begin a review process with industry representatives within 6 months of the release of each new FDA code and that changes should be enacted within 18 months of the release of the code. Indicated support for changes made to DHS 196 "Restaurants" to clarify definitions in that rule. (DATCP and DHS did start the process in 2009; however, at DHS's request, DATCP has accommodated DHS's extended schedule.)